

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

CITY OF NEW BERLIN :

Requesting a Declaratory Ruling :  
Pursuant to Section 111.70(4)(b), :  
Wis. Stats., Involving a Dispute :  
Between Said Petitioner and :

Case XLVII  
No. 28088 DR(M)-178  
Decision No. 19185

NEW BERLIN PUBLIC EMPLOYEES UNION :  
LOCAL 2676, DISTRICT COUNCIL 40, :  
AFSCME, AFL-CIO :

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Appearances:

Lindner, Honzik, Marsack, Hayman & Walsh, S.C., Attorneys at  
Law, by Mr. Roger E. Walsh, 700 North Water Street,  
Milwaukee, Wisconsin 53202, for the City of New Berlin.

Mr. Richard Abelson, Representative, 2216 Allen Lane, Waukesha,  
Wisconsin 53186, for the New Berlin Public Employees Union,  
Local 2676, District Council 40, AFSCME, AFL-CIO.

DECLARATORY RULING

The City of New Berlin having on May 27, 1981 filed a petition requesting the Wisconsin Employment Relations Commission to issue a declaratory ruling, pursuant to Section 111.70(4)(b), Wis. Stats., to determine whether certain proposals submitted to the City by New Berlin Public Employees Union, Local 2676, District Council 40, AFSCME, AFL-CIO during negotiations on the terms of a collective bargaining agreement covering wages, hours and working conditions of certain employees relate to mandatory subjects of bargaining within the meaning of the Municipal Employment Relations Act; and hearing in the matter having been conducted by Examiner Stuart Mukamal, on July 6, 1981, at Milwaukee, Wisconsin; and the City having on August 24, 1981 filed its brief in the matter; and the Union having waived the filing of a brief, relying on the oral argument presented by it during the course of the hearing; and the Commission, having considered the entire record, and the arguments of the parties, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That the City of New Berlin, hereinafter referred to as the City, is a municipal employer, and among its municipal functions operates a Police Department; and that the principal offices of the City are located at 16300 West National Avenue, New Berlin, Wisconsin 53151.

2. That New Berlin Public Employees Union, Local 2676, District Council 40, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization representing certain employees of the City for the purposes of collective bargaining; and that the Union has as its representative Richard Abelson, who has his offices at 2216 Allen Lane, Waukesha, Wisconsin 53186.

3. That at all times material herein the Union has been, and is, the certified collective bargaining representative of all regular full-time and all regular part-time office clerical, technical and related occupational positions, professional library employees and craft employees in the employ of the City; that Police Department dispatchers are included in the aforesaid collective bargaining unit; that the City and the Union were parties to a

collective bargaining agreement covering the wages, hours and working conditions of the above employees, which agreement, by its terms, existed from January 1, 1979 through December 31, 1980; that said agreement contained the following provisions:

ARTICLE IX  
HOURS OF WORK

. . .

9.03      Police Dispatchers.

- A) Work Day. The work day for regular full-time employees shall consist of eight (8) consecutive hours plus muster, or reporting time, of fifteen (15) minutes. Employees shall be allowed to take a one-half (1/2) hour lunch period without deduction during their work shift.

. . .

- C) Schedule. Work shifts shall be scheduled as follows:

7:00 a.m. to 3:00 p.m.  
3:00 p.m. to 11:00 p.m.  
11:00 p.m. to 7:00 a.m.

. . .

- E) Muster Days. A dispatcher shall be allowed ~~three~~ (3) additional days off a year from her regular work schedule in compensation for muster time. Muster days shall be assigned on a regular schedule.

4. That during the spring of 1981 the parties were engaged in negotiations in an effort to reach an accord on a new collective bargaining agreement to succeed the 1979-1980 agreement; that during the course of said negotiations, the Union proposed to include the above provisions relating to "Muster time" in the new agreement but to increase the compensatory days off referred to in Article IX E) from three to four days; that the City proposed to delete the portion of Article IX A) containing the language "plus muster or reporting time, of fifteen (15) minutes" and all of Article IX E) contending that said language does not relate to a mandatory subject of bargaining; and that the City filed the instant petition seeking a declaratory ruling in the matter.

5. That the fifteen minute muster time occurs immediately prior to the beginning of each shift; that although dispatchers perform a variety of functions during muster time including some dispatching, taking in fines and hearing complaints at the window and answering the telephone, the primary purpose of muster time is to allow dispatchers coming on duty an opportunity to receive a briefing from their superiors and those completing their shifts.

6. That because the Union's proposal to include language from Article IX A) and E) of the 1979-1980 contract in the new collective bargaining agreement between it and the City requires that dispatchers spend 15 minutes per day in "muster" or "reporting" time, it primarily relates to a managerial decision to assign duties which fall within the scope of responsibilities applicable to the kind of work performed by said dispatchers while actively employed.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

That the proposals submitted by New Berlin Public Employees Union, Local 2676, District Council 40, AFSCME, AFL-CIO during negotiations with the City of New Berlin, relating to "muster" and "reporting" time applicable to dispatchers in the employ of the Police Department of the City of New Berlin, relate to permissive subjects of bargaining within the meaning of Section 111.70(1)(d), Wis. Stats.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

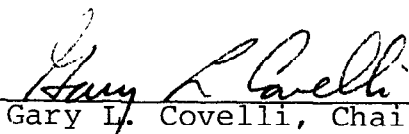
DECLARATORY RULING

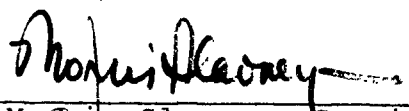
That the City of New Berlin has no duty to bargain collectively with New Berlin Public Employees Union, Local 2676, District Council 40, AFSCME, AFL-CIO, with respect to proposals relating to "muster" or "reporting" time applicable to dispatchers in the employ of the Police Department of the City of New Berlin.

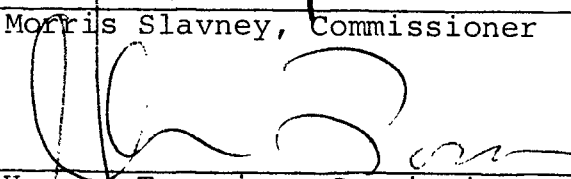
Given under our hands and seal at the City of Madison, Wisconsin, this 4th day of December, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
\_\_\_\_\_  
Gary L. Covelli, Chairman

  
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Morris Slavney, Commissioner

  
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Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSION  
OF LAW AND DECLARATORY RULING

In this proceeding the City urges the Commission to conclude that the Union's proposals with respect to "muster" time, as set forth in the Findings of Fact, relate to permissive subjects of bargaining, contending that said proposals require it to continue "muster" time and thus interfere with "decisions related to the exercise of municipal powers and responsibilities". The City also emphasizes its belief that the fifteen minute "muster" time constitutes a form of "overtime", over and above the regular work week and regularly scheduled work day, and that the compensation therefor, in the form of additional vacation days, constitutes "overtime compensation". The City further contends that the duties performed by the dispatchers during their "muster" time clearly fall within the duties and responsibilities of a dispatcher, and therefore said provisions relate to permissive subjects of bargaining, citing the Commission's decisions in Milwaukee Board of School Directors 1/ and City of Wauwatosa 2/, wherein the Commission concluded that decisions relating to the assignment of certain job duties, which fall fairly within the scope of the duties of the employees involved, relate to permissive rather than to mandatory subjects of bargaining. Accordingly the City argues it has the right to eliminate the duties which have been performed during the fifteen minute "muster" period or may unilaterally require that said duties be performed during the regular eight hour shift period.

The City also cites previous Commission decisions in support of its contentions wherein the City alleges that the Commission found proposals similar to the Union's herein related to permissive subjects of bargaining - "assignments to extra work or overtime work or work outside the regular work week" 3/; "requiring stand-by duties or other work during off-duty hours" 4/; and "requiring additional assignments for teachers after the regular workday or workweek, such as parent conferences, special help for students, and faculty and departmental meetings" 5/. In summary, the City contends that the Union's proposals "effectively precludes a policy choice on the part of the City to change its prior practice of requiring Dispatchers to report prior to their regular work hours to receive instructions and exchange information . . . This is clearly a policy decision."

While the Union did not choose to file a brief, its representative presented oral argument in the matter which, in material part, contained the following statements:

"It's the Union's position in this case that the issue of the fifteen minutes prior to the regular shift -- the regular work shift are clearly a mandatory subject of bargaining as to the fact that they relate solely and completely to the hours. There is nothing magical about an eight hour workday. We do set forth a regular schedule of hours that -- that do set forth -- that does set forth an eight hour workday; however, we have amended

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- 1/ Dec. No. 17504, 12/79
  - 2/ Dec. No. 15917, 11/77
  - 3/ City of Brookfield (17947) 7/80
  - 4/ City of Waukesha (Fire Department) (17830) 5/80
  - 5/ Milwaukee Board of School Directors, supra

that by saying that the Dispatchers shall report to work for what we call muster or reporting in time an additional fifteen minutes early. We have created, therefore, a normal work day of not eight hours, but eight hours and fifteen minutes. We have, however, bifurcated the compensation that employees receive for that eight hours and fifteen minutes workday. We have set forth that the employee shall be paid for a normal regular eight hour work day in wages. We have also set forth that the employee shall be compensated an additional three days off per year for the fifteen minutes report in time or muster time. The fact is that the City has the right to use that time however they see fit. If they want to allow that fifteen minute time for what we have described as roll call, they can use it for roll call. If they want to use that time, the fifteen minutes, for additional dispatching duties, they can use it for additional dispatching duties. If they want that time for interaction between the Dispatcher who is going off shift, and the Dispatcher who is coming on shift, they can use the time for that. But the fact is that the hours themselves are clearly a mandatory subject of bargaining. The regular workday for first shift is 6:45 a.m. to 3:00 p.m. The second shift is -- it is from 2:45 p.m. to 11:00 p.m. For the third shift it is from 10:45 p.m. to 7:00 a.m. Again the difference comes in compensation. Now the Union would relate this matter in the same way that we would look upon what is typically called in a blue collar unit a wash up time provision. The fact is that in a wash up time provision where an employee gets ten or fifteen minutes to wash up prior to the start of his lunch break, or prior to the end of his regular work shift that -- that relates to a policy. It relates to downtime. It relates to the fact that the employee is not working at his typical duties that time. But the fact is that is still an hours and working conditions type matter, and it relates to clearly a mandatory subject of bargaining. However, in that instance usually the employee is compensated for his full contingent of work hours. This is the same sort of matter except for the fact we're not dealing with eight hours minus fifteen minutes. We're dealing with a different compensation schedule for the additional fifteen minutes than we deal with for the basic eight hours. We feel quite strongly that this is clearly a mandatory subject of bargaining and not a policy issue as set forth by the City, and we would hope that the Commission would find this declaratory ruling without merit and find that this matter is a mandatory subject of bargaining."

In determining whether proposals made during the course of collective bargaining pertain to mandatory or permissive subjects of bargaining, the Commission has to determine whether the proposals in issue are primarily related to the wages, hours and conditions of employment of the affected employees, or whether the proposals are primarily related to the formulation or management of public policy. 6/

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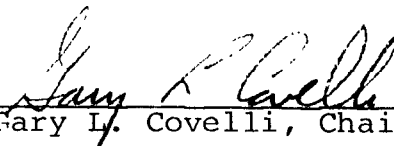
6/ Unified School Dist. of Racine County v. WERC, 81 Wis. 2d 89 (1977), Beloit Education Assn. v. WERC, 73 Wis. 2d 43 (1976)

Here, the City would have the Commission conclude that the proposals in issue relate primarily to the management of the operation of the Police Department, and therefore relate to "public policy". The Union, on the other hand, argues that the proposals primarily relate to hours and working conditions.

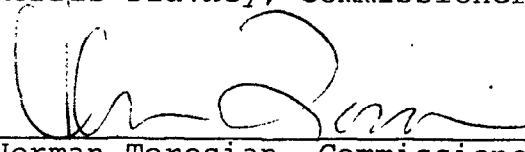
The language of the Union's proposals relating to "muster" and "reporting" time, and the method of compensation therefor, is inconsistent with the Union's argument that the City has the right to use the 15 minutes as it sees fit. The proposal limits use of said 15 minutes to "muster" or "reporting" time, thus requires the City to utilize said period of time for such purposes, and thus constitutes a constraint on the right of the City to manage the Police Department. The proposed language thus relates to a permissive rather than a mandatory subject of bargaining. Had the proposal merely required that the regularly scheduled work day consist of 8 hours and 15 minutes and that the dispatchers should be allowed days off as compensation for said daily 15 minutes over and above the normal 8 hour day, we would have concluded that such proposal primarily related to "hours", and was therefore a mandatory subject of bargaining.

Dated at Madison, Wisconsin, this 4th day of December, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Gary L. Covelli, Chairman

  
Morris Slavney, Commissioner

  
Herman Torosian, Commissioner

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